



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI (NAIROBI LAW COURTS)**

**Misc. Appli. 886 of 2006**

**STEPHEN MUNGAI .....APPLICANT**

**V E R S U S**

**WILSON NDUNGU NGUGI .....RESPONDENT**

**R U L I N G**

The Applicant seeks by this application (originating summons dated 5<sup>th</sup> December, 2006) the following main orders:-

1. That the Applicant be granted leave to appear *ex parte* before the **Dagoretti Land Control Board** in respect to an application for consent to transfer land parcel **L.R. DAGORETTI/THOGOTO/T.451**. In the alternative, that such land control consent be dispensed with.
2. That leave be granted to register the transfer of the said parcel of land dated 31<sup>st</sup> December, 2004.

The main ground for the application is that the Respondent, **WILSON NDUNGU NGUGI**, has since permanently immigrated to the **United States of America** after winning a “**green card**”. This was after he had sold the subject parcel of land to the Applicant and executed all relevant documents, including land control consent application and transfer of land forms.

At the hearing of the application the Applicant’s learned counsel sought an additional order, for extension of time to apply for land control consent under the proviso **to section 8(1)** of the **Land Control Act, Cap. 302**.

I have read the supporting and supplementary affidavits. I have also given due consideration to the submissions of the learned counsel for the Applicant. The Respondent sold to the Applicant the subject land some time in the year 2004. Both parties signed the necessary land control consent and transfer forms. It would appear that the Respondent thereafter emigrated to the United States of America before the parties could appear before the relevant land control board. It appears also that the Applicant will not be able to secure the Respondent’s attendance at the land control board.

Under section 8(1) of Cap. 302 aforesaid, application for land control consent should have been made within six months of the making of the agreement for sale. That period is long passed. But under the proviso to that section, this court has the power to extend that period where it considers that there is sufficient reason so to do upon such conditions, if any, as it may think fit. In the peculiar circumstances of this case, I consider that there is sufficient reason to extend the period to enable the Applicant to apply for land control consent. I will extend the period to three (3) months from the date of delivery of this ruling. It is so ordered.

Regarding the prayer that the Applicant be permitted to present the application for land control consent alone, it appears to me that the Respondent was fully paid the purchase price. It appears further that it was just unfortunate that he had to emigrate to the United States of America before the parties could appear before the land control board. The Applicant now finds himself in a situation where he cannot secure the attendance of the Respondent before the land control board. He has therefore come to court for assistance. I find no reason to deny him that assistance, again in the peculiar circumstances of this case. I

will therefore grant him leave to appear *ex parte* before the Dagoretti Land Control Board in respect to transfer of land parcel L. R. DAGORETTI/THOGOTO/T.451.

Finally, as already noted, the Respondent had duly signed the necessary transfer form; I will therefore allow the last prayer. I hereby grant the Applicant leave to register the transfer signed by the parties on 31<sup>st</sup> December, 2004 in respect to the said parcel of land once the necessary land control consent is obtained.

There will be no order as to costs of the application. Those shall be the orders of the court.

**DATED AT NAIROBI THIS 22<sup>ND</sup> DAY OF MAY, 2008**

**H. P. G. WAWERU**

**J U D G E**

**DELIVERED THIS 23<sup>RD</sup> DAY OF MAY, 2008**